

The McCullough Review

Progress Report – January 2025

1. Introduction

- 1.1 In June 2024 I was appointed by the Chief Constable of PSNI to conduct an independent review into concerns regarding PSNI conduct in relation to covert surveillance of journalists and lawyers.
- 1.2 On 17 December 2024 the Investigatory Powers Tribunal ('IPT') handed down its [judgment in the cases of Barry McCaffrey and Trevor Birney](#). This case has played a major role in giving rise to the concerns that led to the setting up of the Review, and my appointment as independent reviewer. It therefore seems an appropriate point to provide an update on the progress of the Review. The IPT judgment is long and detailed but the Tribunal has produced a helpful 'Press Summary' setting out the background and key findings: linked [here](#). These two journalists, both based in Northern Ireland, were arrested and the subject of warrants for the search of their homes and offices in the course of an investigation into the apparent leaking of documents from the office of the Police Ombudsman of Northern Ireland ('PONI'). The documents had appeared in a film, 'No Stone Unturned' which was an investigative documentary made by the journalists. The search warrants were subsequently held by the High Court to have been unlawfully issued, noting that there was no overriding requirement in the public interest that could have justified that interference with the protection of journalistic sources¹. The IPT proceedings brought by Mr McCaffrey and Mr Birney established that they had been affected by covert measures, including an application for a Directed Surveillance Authorisation which the IPT held had been unlawfully obtained in 2018. PSNI also admitted that an application for Mr McCaffrey's communication data in September 2013 was unlawful as not containing effective safeguards in relation to the protection of journalistic sources².
- 1.3 There are ongoing IPT proceedings naming PSNI in other relevant matters, and the significance of these to the Review and its progress are mentioned below at 5.2.
- 1.4 As the work of the Review is ongoing I am not yet in a position to provide any definitive findings or conclusions at this point, and I do not consider it sensible to indicate any provisional views on the substantive issues being investigated. However, in line with my determination that the Review should be as transparent as possible, I believe that there is merit in providing a public update at this stage. Some of this information has already been published on [the](#)

¹ *In re Fine Point Films and others* [2020] NICA 35, Morgan LCJ, Treacy LJ and Keegan J; §55

² [IPT judgment](#) at §89

[Review website](#), which I have used as a means of providing *ad hoc* updates since starting this work.

- 1.5 In this progress report I set out the approach of the work of the Review thus far, and the facilities provided by PSNI. In particular, under section 9 below I have explained that I have sought and been granted unsupervised and unrestricted access for the Review team to all PSNI systems relevant to authorisations for covert surveillance, and its resulting intelligence.

2. The Group of Experts and Stakeholders

- 2.1 From the outset, I have been assisted by a group of eight experts and stakeholders ('GoES'), who bring a wealth of relevant expertise and experience, including in human rights, legal practice, journalism, as well as oversight of policing in Northern Ireland. The group includes, as an observer, John Wadham who is the Human Rights adviser to the Northern Ireland Policing Board ('NIPB').
- 2.2 We generally meet every fortnight to discuss the progress of the Review and particular questions as they have arisen. I also call on their advice on other occasions, between meetings, in considering any general aspect of the review – and have sought input from individual members of the group in relation to points specific to their expertise. We agreed at an early stage that I would not share with members of the GoES the identities of anyone who has voluntarily contacted the Review with information. The group also does not have access to any sensitive information made available to the Review, but their expert input has been invaluable as a source of both challenge and advice, and I proposed to continue to consult with them regularly. The conduct of the Review, however, remains my responsibility, not that of the GoES.

3. Terms of Reference

- 3.1 Having asked me to conduct this Review, the Chief Constable invited me to draft my own terms of reference. In doing so he did not impose any preconditions or restrictions. The [Terms of Reference](#) ('ToR') were then drafted by me in close consultation with the GoES. My final draft of the proposed ToR was approved by the GoES and agreed without amendment by the Chief Constable on 14 June 2024.
- 3.2 The ToR should be read in full but, in summary, provide for me, as Reviewer, to investigate, evaluate and assess the propriety and legality of any surveillance by PSNI of journalists and lawyers. Following discussion with the GoES I also proposed that the remit of the Review should extend to any surveillance of NGOs and bodies overseeing policing in Northern Ireland: the PONI and the

NIPB. Under the agreed ToR those within these groups are of “special status”. The period under review is from 1 January 2011 to 1 November 2024.

- 3.3 The ToR initially provided that the Review would consider matters within its remit without a specific end point. However, I considered that it was realistically necessary to specify an end date. Accordingly, following discussion with the GoES and with the agreement of the Chief Constable, I set 1 November 2024 as the end date of the period under review, that being the deadline (as extended) for responses to the Call for Evidence to the Review.
- 3.4 An important feature of the ToR is the recorded commitment to openness and transparency shared by me as Reviewer and the Chief Constable in relation to my findings and recommendations: see paragraphs 13 and 16.

4. Start date of the period under review

- 4.1 Following representations made to me, I have considered whether the start date of the Review should be pushed back to a date earlier than 1 January 2011. However, having discussed the matter with the GoES, I do not believe that this is necessary or desirable. The Review is already examining a period of almost 14 years, and thus far I have not seen any material, or become aware of any concerns, which justify the expansion of this period further back in time. To do so would significantly increase the amount of work required for relatively limited additional value.
- 4.2 There is also an advantage to adopting the same starting date as was used for the [Chief Constable’s June 2024 report to the Policing Board](#), given that my Review seeks to evaluate the information provided in that report. Nevertheless, the ToR enable the period under review to be expanded (by agreement with the Chief Constable) and I am keeping this under active consideration.

5. Remit of Review

- 5.1 I have also considered whether it would be appropriate to ask the Chief Constable to agree an expansion of the Review to consider broader questions of PSNI’s approach to monitoring of its own staff. Such an expansion has been suggested to me by some individuals. Again, however, I do not think that such a substantial enlargement of the remit of the Review would be desirable. To expand the remit would inevitably increase the work of the Review considerably, and the time it would take. The additional work required would significantly delay the publication of the final Report, and there is a strong public interest in my findings being delivered as soon as realistically possible. I therefore consider that the Review should remain focused on journalists,

lawyers and the other limited identified “special status” groups and individuals, to evaluate the concerns that led to it being set up.

- 5.2 Under my ToR the Review will not consider any ongoing proceedings before the IPT until those proceedings have been finally determined. However, as detailed further below, I do have access to all material held by PSNI, including that which may be relevant to any IPT proceedings. Whilst the IPT has delivered its judgment in the important case of *Birney and McCaffrey*, there are other potentially relevant matters before it, including related proceedings³ brought by Vincent Kearney, a BBC journalist, that remain ongoing. The point at which these further matters will fall within my remit is beyond my control.
- 5.3 It is also important to highlight that the Review only concerns PSNI. I have taken the view that this includes actions carried out by other police forces in so far as they are doing so under the direction of PSNI. However, under the ToR the Review will not consider the intelligence agencies (e.g. MI5), the British military, or other police forces, either in the UK or the Gardai. The focus is exclusively on the conduct of PSNI, and it is through the Chief Constable’s authority that I have the powers that enable me to examine PSNI’s surveillance as it may have affected ‘special interest’ groups within the remit of the ToR.

6. Assistants

In the initial stages of the Review it was apparent to me that it was unrealistic, within any sensible time frame, for me to conduct this task without assistance. I therefore nominated two barristers, [Matthew Hill](#) and [Rajkiran Arhestey](#), to be appointed as assistants. Their appointment was discussed with the GoES and my request was promptly approved by the Chief Constable. Both assistants already had the necessary high levels of security clearance and we have been working together on the Review since September 2024.

7. Publicity for the Review

- 7.1 I have sought to publicise the Review in a variety of ways to ensure that anyone with concerns is aware of the Review and can raise their concerns with me.
- 7.2 I have issued press releases, which also appear on the Review website, to a list of over 100 relevant media contacts.
- 7.3 Various media outlets, including the BBC, the Belfast Telegraph and the Irish News, have reported on the Review. Organisations such as the National Union of Journalists, Amnesty International and the Committee on the Administration of Justice have helped raise the profile of the Review including

³ As noted in the [IPT judgment](#) at §§13 and 140

through press releases and social media posts. The Chief Constable has encouraged current and former PSNI officers and staff to be in touch with the Review with any relevant information. As enshrined in the ToR, any former PSNI personnel are authorised and requested by the Chief Constable to provide full cooperation with the Review. The Chief Executives of both PONI and the NIPB have similarly alerted their staff (and NIPB members and former members) to be in touch with any relevant information or concerns. The [Review's website](#) provides accessible information as to how to contact the Review and News and Updates.

- 7.4 With the publicity that the Review has received, both generally and targeted to groups which may include those with relevant knowledge, experience, or concerns, I consider that there can be a good level of assurance that the Review will have come to the attention of anyone likely to hold relevant information.

8. Call for Evidence

- 8.1 I issued a Call for Evidence on 10 July 2024 with an initial deadline of 18 October 2024. That deadline was extended to 1 November 2024 to ensure the maximum number of people who wanted to respond were able to do so. I have received several responses after the deadline and thus far I have not excluded any of these on that basis. The Review has received about 50 responses from a wide variety of individuals and on behalf of two organisations. A small number of these responses (about 5) relate largely or entirely to matters outside my ToR. Most submissions, about 80%, have been from journalists and lawyers.
- 8.2 From the outset I have emphasised that [those contacting the Review may do so in confidence](#), subject to the caveat that anyone suspected of wrongdoing is not guaranteed anonymity.
- 8.3 All those who have indicated in their Questionnaire response that they wished to submit additional documents have been provided with a secure means of doing that.
- 8.4 A number of responses have asked whether I will confirm if they have been subject to surveillance. This is addressed in [the Q&A section of the Review website](#) at Questions 6 and 7. In summary, there is a presumption that individuals who have been subject to apparently improper or unlawful surveillance will be informed, subject to legal constraints. However, it will not generally be possible to confirm or deny to individuals or organisations whether they have been subject to lawful surveillance, given legal (as well as practical) limitations.
- 8.5 It is nevertheless intended that the Review should reach clear general conclusions in relation to PSNI conduct over the relevant period to enable

reassurance as to lawfulness, or findings as to any unlawful practice, to be reached, as the case may be.

9. Access and work done to date

- 9.1 Much of my initial work, with my assistants, has been in identifying and understanding the various systems used by PSNI over the 14-year period under review to store documents authorising different types of covert surveillance - and the resulting intelligence arising from that surveillance. We have spent a significant amount of time with PSNI personnel to understand how these internal systems and databases can be thoroughly, anonymously and effectively searched.
- 9.2 We have also been keen to understand the scope, on a theoretical level, that there may be for bypassing the proper statutory processes, and any vulnerabilities in the systems. That understanding informs consideration of the likelihood of 'off the books' surveillance and how that might be detected. The potential for this varies considerably, depending on the type of surveillance under consideration. We have also had in mind that surveillance may not necessarily be targeted against someone of 'special status' in order for it to have a relevant impact - such as tending to reveal legally privileged or journalistic material, including journalistic sources.
- 9.3 The Chief Constable has been proactive in ensuring that we have full and unrestricted access to PSNI personnel and materials. I requested that this access should be unsupervised, so that the Review team has the ability to conduct searches ourselves, using anonymised login details. This access has been granted in full, together with considerable expert assistance in understanding the various systems and how they may be most effectively searched.
- 9.4 As well as direct access to the Chief Constable, I am able to draw on senior assistance from Acting Deputy Chief Constable Chris Todd (and more recently the newly appointed Deputy Chief Constable Bobby Singleton) as well as Assistant Chief Constable Ryan Henderson. The Chief Superintendent who is head of C5 (Crime Support) has been our day-to-day point of contact in arranging facilities and access. Where relevant documents are in hard copy only, we also have access to these.
- 9.5 It may therefore be seen that in relation to the systems for record-keeping of authorisations and resulting intelligence, we are not reliant on asking PSNI to find documents for us and disclose them. We have the unrestricted ability to search, without supervision, for documents ourselves on all the declared systems on which the formal authorisation processes relating to covert surveillance and its product are held. Nevertheless, as referred to at paragraph

9.7(iv) below, we are alert to the possibility of undeclared or informal systems for authorising or conducting covert surveillance. Information provided to us in the questionnaires has been helpful in targeting our searches. For example, we can search for keywords or for specific names and contact details. We have also taken steps to ensure, so far as it is possible, that PSNI are not able to see what we have been searching for, in order to maintain the guarantee of anonymity to those who have submitted questionnaires.

9.6 At this point I am entirely satisfied that our unrestricted access to PSNI systems to the highest level, together with the expert assistance and cooperation of those with deep understanding of those systems, should enable my Review to reach reliable conclusions on the matters within our remit. Thus far no individual, whether current or former PSNI personnel, or any other person, has refused a request to meet me and provide such assistance as they may be in a position to render.

9.7 The following is a non-exhaustive indication of the lines of work that we are undertaking:

- (i) Independently evaluating the information and statistics contained in the [June 2024 report](#) submitted by the Chief Constable to the NIPB.
- (ii) Conducting searches using generalised search terms to identify covert surveillance of those of 'special status'.
- (iii) Conducting specific searches relating to individuals who have submitted completed Questionnaires to the Review, and others whose profile might make them a possible subject of surveillance.
- (iv) Considering the possibility of surveillance that is not, or not properly, recorded on PSNI systems.
- (v) Evaluating relevant applications and authorisations within each category of covert surveillance to assess their legality by reference to applicable legal standards.
- (vi) Evaluating the concerns reported in the media about PSNI conduct within the scope of the Review.
- (vii) Considering recommendations for improvements in the systems to make them more robust, and increase reassurance in their legality.

9.8 It is worth noting that the painstaking searching of the various PSNI systems is slow work – and it is fair to say considerably more time-consuming than I had anticipated. The relevant legislation has changed considerably over this 14-year time period under review, as have PSNI systems and processes, and the repositories for relevant data.

9.9 As well as the work in doing searches we also have an ongoing programme of meetings with individuals and representatives with particular views or potential knowledge of the matters under review.

10. Privacy Notice

In conjunction with PSNI's data protection officer, we have considered in detail the data protection implications of our work, and its relationship with PSNI's own data protection obligations. A Privacy Notice explaining the position in detail has been made available on the website, and a link to this is being sent to all those who have submitted Questionnaires to the Review, together with this Progress Report.

11. The Northern Ireland Policing Board (NIPB)

- 11.1 On 3 October 2024 I appeared together with the Chief Constable before the NIPB at their invitation in a closed session of the Board. Although my Review was commissioned by, and will report to, the Chief Constable, he in turn is statutorily accountable to the NIPB. With the Chief Constable's approval I was pleased to have this opportunity to explain to the Board the work of the Review to that point, and answer questions from Board members.
- 11.2 I have been informed that on 5 December 2024 the NIPB decided to adopt the current ToR for my Review as the basis for its request to the Chief Constable under section 59 of the Police (Northern Ireland) Act 2000. That section relates to the general duty of the Chief Constable to report to the Board and gives the Board power to require a report on any matter connected with the policing of Northern Ireland. The Board has requested the Chief Constable for a report by 31 March 2025 but indicated that this date would be kept under review in the light of the Review's progress.

12. Further update and timetable for report

In light of the date specified to the Chief Constable by the Board (paragraph 11.2 above), I intend that in early March I will indicate to the Chief Constable a timetable for my reporting to him, on the basis of the stage that we have reached by then. I will publish that further update on this website. I am conscious of the need to publish findings and associated recommendations as soon as possible, consistently with having conducted a thorough review enabling reliable findings to be reached. As highlighted above, whilst there are ongoing IPT proceedings considering complaints that would otherwise be relevant to my review, I currently consider that these should not prevent me from producing at least an interim report that makes findings and recommendations on central issues of concern – even before all of those IPT proceedings have necessarily been concluded.

Angus McCullough KC

27 January 2025